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RECORDATION NO. 13649-A FILED 125

MAY 25 1982 - 10 30 AM

RECORDATION NO. 13649 INTERSTATE COMMERCE COMMISSION FILED 125

MAY 25 1982 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

GT

Grand Trunk Western Railroad Co.

Law Department

131 West Lafayette Boulevard
Detroit, Michigan 48226
(313) 962-2260

FEDERAL EXPRESS

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

2-145A017

No.

MAY 25 1982

Date

Fee \$

ICC Washington, D. C.

May 21, 1982
File:

FEE OPERATION BR.

MAY 25 10 21 AM '82

RECEIVED

Dear Mrs. Mergenovich:

Enclosed for recordation with the Interstate Commerce Commission are counterparts of Conditional Sale Agreement and Agreement and Assignment, both dated as of April 2, 1982. The Conditional Sale Agreement is a primary document.

The parties to said documents are:

Vendor:	Portec, Inc. 1800 Century Boulevard, N.E. Suite 680 Atlanta, Georgia, 30345
Vendee:	Grand Trunk Western Railroad Company 131 West Lafayette Boulevard Detroit, Michigan, 48226
Assignee of the Vendor:	Bankers Trust Company 280 Park Avenue New York, New York, 10017

The description of the equipment covered by said documents is as follows:

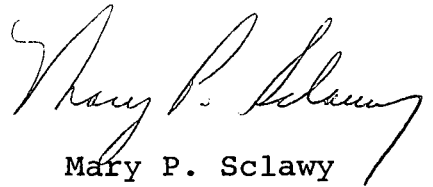
52 newly rebuilt 89-foot flat cars with attached roofless tri-level auto racks with side screens and end doors, bearing road numbers GTW 311157-311208, both inclusive, and the legend "Ownership Subject to a Security Agreement Filed With the Interstate Commerce Commission."

Also enclosed is our Check No. 623 in the amount of \$50.00.

Mrs. Agatha L. Mergenovich
Secretary, I.C.C.
May 21, 1982 - File: 352-Sep.
Page Two

Please accept one counterpart of each document for filing, stamp the remaining with your recordation number and return them with your fee receipt to the undersigned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary P. Sclawy".

Mary P. Sclawy
Attorney

MPS:bjm
Enclosures

RECORDATION NO. **13649-A**

MAY 25 1982 -10 30 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of April 2, 1982

Between

PORTEC, INC.

and

BANKERS TRUST COMPANY

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT dated as of April 2, 1982, between BANKERS TRUST COMPANY (hereinafter called the "Assignee") and PORTEC, INC. (hereinafter called the "Builder").

WHEREAS the Builder, Grand Trunk Western Railroad Company, a Michigan corporation and a wholly owned subsidiary of Grand Trunk Corporation (the "Railroad"), and Grand Trunk Corporation, a Delaware corporation (the "Guarantor"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the equipment described in Schedules B and C to the CSA (said equipment being hereinafter called the "Equipment"); and

WHEREAS the Assignee is a New York banking corporation and, as such, is authorized to enter into this Assignment;

NOW, THEREFORE, THIS ASSIGNMENT WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties do hereby agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all its right, title and interest in and to each unit of the Equipment when and as delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all its right, title and interest in, to and under the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, and the last paragraph of Article 16 thereof and reimbursements for taxes paid or incurred by the

Builder as provided in Article 6 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad or the Guarantor to the Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad or the Guarantor under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the rights, powers, privileges and remedies of the Builder under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct or rebuild, as the case may be, and deliver the Equipment in accordance with the CSA or with respect to their obligations contained or referred to in Article 15 of the CSA, or relieve the Railroad or the Guarantor from their obligations to the Builder contained or referred to in Articles 2, 3, 6, 14, 15 and 16 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce payment of any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad and the Guarantor with the terms, covenants and agreements on their parts to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct or rebuild, as the case may be, the Equipment in full accordance with the CSA and will deliver the same upon

completion to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants, terms and conditions of the CSA to be performed and complied with by it. It further agrees that it will warrant to the Assignee and the Railroad that, at the time of delivery of each unit of the Equipment under the CSA, it had legal title to such unit and good and lawful right to sell such unit, and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA); and it further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery by it, and the acceptance by the Railroad, of such unit under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. It will not deliver any of the Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 20 of the CSA have been effected (the Builder and its counsel being entitled to rely on written advice from counsel for the Railroad that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that, in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, it will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any claim, defense, setoff or recoupment whatsoever of the Railroad arising out of its actual or alleged breach of any obligation with respect to the Equipment or the manufacture, construction, rebuilding, delivery or warranty thereof, or by reason of any claim, defense, setoff or recoupment whatsoever arising by reason of any other indebtedness or liability at any time actually or allegedly owing by it to the Railroad. Its obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 16 of the CSA, to strike any claim, defense, setoff or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such claim, defense, setoff or recoupment as a triable issue in such

suit, proceeding or action, the Assignee's prompt notification to it of the asserted claim, defense, setoff or recoupment and the Assignee's giving it the right, at its expense, to compromise, settle or defend against such claim, defense, setoff or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combination specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use, in or about the construction or reconstruction, as the case may be, or operation of the Equipment, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at its expense, to compromise, settle or defend against such claim.

The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof (other than such as result from reassignment to the Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on any Closing Date fixed as provided in Article 4 of the CSA, shall pay to the Builder an amount equal to the Purchase Price of the Equipment, provided that there shall have been delivered to the Assignee, as provided in Article 16 of the CSA at least five business days (as defined in said Article 4) prior to the Closing Date, the following documents, in form and substance satisfactory to it, in such number of counterparts as may be reasonably requested by it:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee the title of the Builder in the Equipment, warranting to the Assignee and to the Railroad that, at the time of delivery and acceptance of the Equipment under the CSA, it had legal title to

the Equipment and good and lawful right to sell it, and that title to the Equipment was free of all claims, liens, security interests and other encumbrances (other than those created or permitted by the CSA and this Assignment), and covenanting to defend the title thereto against the demands of all persons whomsoever based on claims originating prior to the delivery thereof by the Builder and acceptance thereof by the Railroad under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the Equipment, as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the Equipment, accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of the units of the Equipment covered thereby;

(d) one or more opinions of counsel for the Railroad, dated as of the Closing Date and addressed to the Builder and the Assignee, stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and is a legal and valid instrument binding upon, and enforceable against, the Railroad in accordance with its terms, (iii) title to and a first and prior security interest in the units of Equipment is validly vested in the Assignee, and title to such units, at the time of delivery thereof to and acceptance thereof by the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created or permitted by the CSA and this Assignment), (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the CSA or this Assignment or for the performance of the CSA, (v)(A) the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. Sec. 11303 and duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit has been duly published, or adequate provision has been made therefor, in the

Canada Gazette in accordance with said Section 86, and no other filing or recordation or refiling or rerecordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia or in Canada or any province thereof, and (B) if such opinion is being rendered in connection with settlement for units of Rack Equipment (as defined in the CSA), financing statements in respect of such Equipment, the CSA and this Assignment have been duly filed and recorded in the State of Michigan in accordance with the applicable provisions of the Uniform Commercial Code of the State of Michigan and no other filing or recordation or refiling or rerecordation (except as specified) is necessary for the protection of the rights of the Assignee in any state of the United States of America or the District of Columbia, (vi) registration of the CSA and/or of this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, and (vii) neither the execution and delivery of the CSA nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter (as amended) or the by-laws (as amended) of the Railroad, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Railroad is now a party or by which it or any of its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Railroad or upon the Equipment pursuant to the terms of any such agreement or instrument, other than the encumbrance created by the CSA in and to the Equipment;

(e) an opinion of counsel for the Builder, dated as of such Closing Date and addressed to the Railroad and the Assignee, to the effect set forth in clause (iii) of subparagraph (d) above (as to title to the units of the Equipment and liens, security interests and other encumbrances created by the Builder) and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized,

executed and delivered by the Builder and is a legal and valid instrument binding upon, and enforceable against, the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon, and enforceable against, the Builder in accordance with its terms, and (iv) the bill of sale referred to in subparagraph (a) of this Section 4 has been duly authorized, executed and delivered by the Builder and is valid and effective to transfer all right, title and interest of the Builder in and to the units of Equipment covered thereby to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created or permitted by the CSA and this Assignment);

(f) an opinion of counsel for the Guarantor, dated as of such Closing Date and addressed to the Builder and the Assignee, to the effect set forth in clauses (ii) and (iv) of subparagraph (d) above (but, in the case of said clause (ii), in respect of the Guarantor) and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) neither the execution and delivery of the CSA nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter (as amended) or the by-laws (as amended) of the Guarantor, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Guarantor is now a party or by which it or any of its properties may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Railroad or the Guarantor or upon the Equipment pursuant to the terms of any such agreement or instrument, other than the encumbrance created by the CSA in and to the Equipment;

(g) a certificate of an officer of the Railroad, dated as of the Closing Date and addressed to the Assignee, to the effect that (i) no event of default,

or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and, to the best of his knowledge and belief after reasonable inquiry and investigation, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment, and (iii) no taxes, assessments or governmental charges or levies are delinquent which could adversely affect the security interest of the Assignee in the Equipment; and

(h) an opinion of McCarthy & McCarthy, special Canadian counsel for the Railroad, addressed to the Assignee, to the effect that (i) the CSA and this Assignment have been duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit has been duly published or adequate provision has been made therefor in the Canada Gazette in accordance with said Section 86 and no other filing or recordation or refiling or rerecordation is necessary for the protection of the rights of the Assignee in or to the equipment under the CSA and the Assignment in Canada or any province thereof, (ii) no authorization or approval from any governmental ministry or agency or public regulatory body in Canada is necessary for the due execution and delivery by the Railroad of the CSA or this Assignment or for the validity or enforceability of any thereof and (iii) the provisions of the CSA and this Assignment do not contravene any applicable Canadian law.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. Counsel for each of the parties may assume due authorization, execution and delivery of any document by the other parties in giving its opinion, and in giving the opinions specified in subparagraphs (d) and (f) of this Section 4, counsel may rely on the opinion of counsel for the Builder as to title to the Equipment at the time of delivery and acceptance thereof under the CSA.

The Assignee shall not be required to make payment for the Equipment assigned hereunder at any time after the commencement of any proceedings specified in clauses (c) or (d) of Article 17 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make any such payment for any reason set forth in the immediately preceding sentence, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the Equipment for which payment has not been made.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad or the Guarantor thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration and, assuming due authorization, execution and delivery by the other parties thereto, the CSA is a valid and existing agreement binding upon it in accordance with its terms and, at the time of the execution and delivery of this Assignment, it is in full force and effect without any amendment thereto or any other change therein, and that the Builder has not heretofore assigned or agreed to assign the CSA or any interest therein or thereunder;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, execute and deliver all such further instruments of assignment, transfer and assurance as are presented to it and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that subsequent to payment to it in full of the Purchase Price for the Equipment and upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing its interest therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the law of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 24 of the CSA. The terms used herein shall have the meanings attributed to them in the CSA unless the context indicates otherwise.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad and the Guarantor, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are the date or dates stated in the acknowledgment hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested.

PORTEC, INC.,

By: *LA Kovach*

Senior Vice President

[CORPORATE SEAL]

Attest:

James E. Smith
Vice-President
& Secretary



[CORPORATE SEAL]

BANKERS TRUST COMPANY

By *Dennis O. Bottles*

Attest:

Elizabeth C. Helsef

STATE OF ILLINOIS)
) ss.:
COUNTY OF DU PAGE)

On this 20th day of May, 1982, before me, personally appeared S. A. Kovach, to me personally known, who, being by me duly sworn, says that he is ~~Senior~~ Vice President of PORTEC, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sammy Higgins
Notary Public

My commission expires

[Notarial Seal]



STATE OF NEW YORK,)

) SS. :

COUNTY OF NEW YORK)

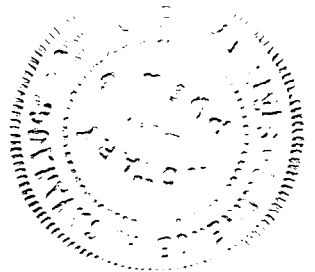
On this 11TH day of MAY, 1982, before me, personally appeared DENNIS O. BATTLES; to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My commission expires

[Notarial Seal]

LAWRENCE H. CAVANAUGH
Notary Public, State of New York
No. 43-4515716
Qualified in Richmond County
Commission Expires March 30, 1983



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

GRAND TRUNK WESTERN RAILROAD COMPANY and GRAND TRUNK CORPORATION, each hereby (i) acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment, dated as of April 2, 1982, between PORTEC, INC. and BANKERS TRUST COMPANY (the "Assignee") and (ii) agrees that all documents deliverable and all monies payable to the Assignee under such assignment or by reason thereof shall be delivered and/or paid to the Assignee at its address at 280 Park Avenue, New York, New York 10015, or as the Assignee may otherwise specify in writing.

GRAND TRUNK WESTERN RAILROAD
COMPANY,

by

P. S. Rth
Vice President

[CORPORATE SEAL]

Attest:

E. S. Tontaine

GRAND TRUNK CORPORATION,

by

P. S. Rth

[CORPORATE SEAL]

Attest:

E. S. Tontaine

